United States Department of Labor Employees' Compensation Appeals Board

C.W., Appellant)	
)	
and)	Docket No. 17-1690
)	Issued: December 27, 2017
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Dublin, GA, Employer)	
)	
Appearances:		Case Submitted on the Record
Alan J. Shapiro, Esq., for the appellant ¹		

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge ALEC J. KOROMILAS, Alternate Judge

On August 2, 2017 appellant, through counsel, filed an appeal from an April 24, 2017 decision of the Office of Workers' Compensation Programs (OWCP) in which an OWCP hearing representative affirmed a July 12, 2016 decision that denied appellant's claim for wageloss compensation from February 18 to May 16, 2016. Counsel asserted that OWCP relied on appellant's other claims in denying the instant claim.² The appeal was docketed as No. 17-1690.

On July 8, 2015 appellant, then a 50-year-old nursing assistant, was injured in a slip and fall at work. OWCP accepted lumbar sprain, contusions of the right hip, right knee, and right wrist as well as strains of the hand and right hip. In February 18, 2016 reports, Dr. Dwayne L. Clay, an attending Board-certified physiatrist, advised that appellant should be off work due to

Office of Solicitor, for the Director

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The record indicates that appellant has three other FECA claims.

her injuries and indicated that she was awaiting right total hip replacement surgery. He continued to advise that appellant could not work due to these conditions. By decision dated July 12, 2016, OWCP denied the claim for wage-loss compensation for the period February 18 to May 16, 2016, finding that the medical evidence was insufficient to establish causal relationship. Counsel timely requested a hearing with OWCP's Branch of Hearings and Review. Dr. Clay continued to submit reports advising that appellant remained totally disabled. On August 19, 2016 he indicated that a February 1, 2007 injury, was accepted for herniated disc injury led to right hip and lower extremity problems and opined that this caused her current disability and necessitated a right total hip arthroplasty. A hearing was held on February 27, 2017. In the April 24, 2017 decision, the hearing representative noted the conditions accepted in the instant claim, File No. xxxxxx448. He also referenced extensive medical evidence found in File No. xxxxxxx204, and discussed the accepted conditions and a job description found in that claim. In affirming the July 12, 2016 decision, the hearing representative relied on evidence from File No. xxxxxx204.

The Board finds that the case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings. Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used. Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated. All evidence that forms the basis of a decision must be in that claimant's case record.

The hearing representative's April 24, 2017 decision referenced evidence associated with OWCP File No. xxxxxx204. He discussed reports from Dr. Everett Walker, Board-certified in preventive medicine, Dr. Wayne Beveridge, a Board-certified neurosurgeon, and Dr. C. Thomas Hopkins, Board-certified in orthopedic surgery. The hearing representative relied on this medical evidence in denying appellant's claim. He, however, neglected to enter the referenced evidence into the current case record, File No. xxxxxxx448. Due to this oversight, the Board is

³ In duty status reports (Form CA-17) dated June 13 and July 13, 2016, Dr. Clay referenced OWCP File No. xxxxxx204, and in correspondence dated August 19, 2016 he referenced File No. xxxxxx390. OWCP adjudicated the instant claim under File No. xxxxxx448.

⁴During the hearing appellant testified that, at the time of the July 8, 2015 injury, she was working in a sedentary position for four hours daily answering a telephone. She indicated that she had performed this job since 2007 and that she continued to receive wage-loss compensation under another claim for four hours daily.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁶ *Id*.

⁷ *Id*.

⁸ *Id*.

⁹ Supra note 2.

not in a position to make an informed decision regarding appellant's claim for disability compensation for the period February 18 to May 16, 2016.¹⁰

Since the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. As noted, all evidence that forms the basis of a decision must be included in the case record. After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's claim for disability compensation. 12

IT IS HEREBY ORDERED THAT the April 24, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 27, 2017 Washington, DC

Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

¹⁰ See L.W., Docket No. 17-0526 (issued May 12, 2017).

¹¹ Supra note 5.

¹² See J.B., Docket No. 17-1356 (issued October 4, 2017).